

Constitutional Reforms

Dr. Jayaprakash Narayan

1. It gives me great pleasure to deliver this year's "Gutta Sri Rama Rao Endowment Lecture". NALSAR represents the growing interest in law, Constitution and Constitutionalism in our vigorous and vibrant democracy. The legal profession was in the forefront of our struggle for freedom from colonial yoke. Mahatma Gandhi, Sardar Patel, Mohammad Ali Zinnah, Motilal Nehru, Prakasam Pantulu and many other stalwarts imbibed the ideals of liberty, self-governance and rule of law from their legal education and practice. It is these liberal, humane and democratic values which sustained us during the turbulent period of our freedom struggle and helped build a true nation with a shared vision from the disparate elements, submerging all the conflicts, differences and diversities. It is also this shared vision shaped by liberal values which made the transition from serfdom to freedom relatively painless and orderly, and welding together of a modern republic respecting and celebrating our diversities possible.
2. Inevitably, liberal education, including legal education, witnessed several vicissitudes over the past fifty years. Consequently, legal profession too suffered in a variety of ways. But Indian society has tremendous resilience and capacity for self-correction. The emergence of these islands of excellence in legal education – NALSAR being one of the prime examples, is a testimony to this capacity for constant improvement and institution-building. I am certain that this nascent institution will play a pivotal role in improving the quality of legal services in India, and help provide speedy, efficient, accessible, affordable justice at the doorsteps to the long-suffering millions of our fellow-citizens.
3. I am especially happy to deliver this endowment lecture celebrating the life of Sri Gutta Sri Rama Rao. Born in an agricultural family with no tradition of learning, Sri Sri Rama Rao's life, professional career and concerns reflect the aspirations of liberal democratic Indians who forged an enduring link between the generation of freedom fighters, representing a great nation and ancient civilization, and the self-confident, outward-looking, vibrant citizens of a young republic. I commend the family of Sri Gutta Sri Rama Rao garu for giving concrete expression to their concerns in the form of this endowment and educational and charitable trust to benefit law students. It is this spirit of philanthropy, and capacity and will to create public goods and services without excessive dependence on the government that distinguishes a truly liberal, humane and civilized society. This sense of common fate, shared prosperity, civil society initiative and self-reliance is what Indian society needs today.
4. I have chosen Constitutional reform as the theme for this lecture with some deliberation. It may seem audacious for any one to venture into this very

Note1: The word 'state' is used in this essay in its juridical sense, and 'State' denotes a province of the Indian Union

Note2: This lecture draws heavily from the author's earlier papers, notably two sources: "Parliamentary Reforms – Continuity and Change" and "A Review of the Indian Constitutional and Political System"

controversial minefield. In our country, dispassionate and objective public discourse has become a casualty to political passions and partisan compulsions. But vigorous intellectual discourse, rigorous scrutiny, respect for facts and constant search for better solutions are the hallmarks of a truly progressive society. By the very nature of things, in a liberal democracy there cannot be 'final' solutions. The only eternal principles we should uphold are liberty, human dignity and opportunity to all citizens irrespective of station and birth for fulfillment of human potential. Most human predicaments are amenable to sensible solutions, if only we shed dogmas, and allow our experience to be the true guide and our eternal goals as the destination. It is in this spirit of enquiry that I embark on this quest for answers to many of our dilemmas. I am not a trained lawyer, nor am I a Constitutional expert. These views are those of a staunch democrat by conviction, and a practitioner of the art of nation building.

Philosophers vs. Laws

5. Historians tell us that throughout history in most cultures there were no specific rules of governance. Certainly in case of India this was largely true. Our ancestors have never really developed a theory of state. Consequently personalised despotism of the monarch was the norm. There were, of course, certain social and religious constraints. Subject to such sanctions, the affairs of state were largely unregulated by any framework of formal laws and rules of governance. In his celebrated work 'The Republic', Plato argued that philosophers alone should be rulers, and when the rulers themselves are philosophers, there is really no need to have a system of laws and rules. As Trevor Saunders points out, "The Perfect Guardians undergo a long and rigorous training in philosophy; they, if any one, really know the moral norms that society must obey. They have absolute and untrammelled power over the rest of the state; in their hands lies the making of such rules and regulations as are necessary.The essential features of such a state are that the few who really know the absolute moral standards rule the many who do not, and that such control is willingly exercised and willingly accepted". Thus, the wise and all-knowing philosophers **know** what is best for all people and for the state, and their judgment at any point of time is the best guarantee of public good.
6. However, history taught us that no matter how wise and wonderful a ruler is, we cannot unreservedly trust his judgment alone in dealing with complex human and societal issues at all times. Even more importantly, no matter how all-knowing and altruistic the ruler is, we cannot for a moment assume that he will forever be invulnerable to temptations of personal gain and vanity at the cost of public good. As Lord Acton observed so wisely, power tends to corrupt, and absolute power corrupts absolutely. Even Plato recognised this truth later in his life, when he wrote 'The Laws' years after 'The Republic'. Again to quote Saunders, "Plato now sees law as the supreme, though essentially imperfect, instrument for the moral salvation of society: he calls it the 'dispensation of reason', and the entire life of the community must accordingly be governed by a detailed code of laws which will express as far as possible the philosophers' vision of the true good". In Plato's conception,

however, such laws are immutable, and should never be changed even in the minutest particulars. "Change, we shall find, except in something evil, is extremely dangerous". We shall examine the validity of this assertion later.

7. It is now almost universally accepted that the basis of laws is that human beings are inherently frail, and the state requires a system of laws and rules to moderate human behaviour. Even wise philosophers and rulers are bound by these laws, as the laws are greater guarantee of state's stability and public good than the unchecked will of mere mortals. It is this recognition that made us accept the need for Constitution and laws as a matter of course in modern era. Even in Britain, with no written Constitution, there is a recognised body of principles and rules which is accepted as the Constitution. Britain was fortunate in having at its disposal ample time to evolve a sound democracy over centuries of trial and error. Nascent democracies and new republics however have no such luxury of time. Recognizing this the American Founding Fathers adopted the first written Constitution while creating the first republic in modern history. Our own freedom fighters wisely recognised the need for a written Constitution to determine the building blocks and architecture of the new republic.

Making of the Constitution

8. With the transfer of power in 1947, an earnest attempt was made to radically transform the Indian state. With the adoption of a democratic system of government, universal adult franchise, republicanism and representative democracy became the corner stones of the architecture of the Indian Constitution. Independent judiciary, separation of powers, accountable governance and people's sovereignty became the guiding principles which informed the making of the Constitution. The turbulence and bloodshed accompanying partition in 1947 did not diminish the great excitement and expectation generated by freedom struggle and independence. Obviously there was enormous pressure on the state to fulfil these expectations in a significant measure. The Constitution-makers attempted to reconcile individual liberty with the state's interventionist role in transforming society.
9. Thus the Fundamental Rights guaranteed various liberties to citizens and these liberties ensured that the state could not affect adversely the liberty and autonomy of individuals and groups. The doctrine of reasonable restrictions and the provision for judicial review effectively protected citizens from the traditional tyranny and depredations of the Indian state. At the same time, the Directive Principles of State Policy were enunciated and they were declared to be fundamental in the governance of the country and a duty was cast upon the state to apply these principles in making laws. The Directive Principles attempted to give expression to the aspirations of the people and to the ideals of the freedom struggle through control, regulation and reform of the Indian Society.
10. A Constitution is a living document which gives a concrete structure and shape to the ideals in forming the state. Mere pious proclamations and grand declarations

remain as empty rhetoric in the absence of a suitable state structure and the myriad details that support the state architecture. In building the edifice of the new India, our Constitution-makers relied on time-tested principles of democratic governance and statecraft. A republican form of government based on representative democracy and universal adult suffrage came into being. Given our colonial ties with the United Kingdom and our acquaintance with the Westminster model, a cabinet-system of government responsible to the elected legislature and which survives only as long as it can enjoy the support of the majority of legislators came to be accepted as a matter of course.

11. The holocaust accompanying partition was an extraordinary calamity by any standards, and is unprecedented during peace time anywhere in the world. More than a million people, both Hindus and Muslims, were butchered for no fault of theirs. Hundreds of thousands of families were devastated by the widespread violence, arson, rape and looting. About eighteen million people were permanently uprooted in the largest-ever mass migration in human history. Given these cataclysmic events at the time of partition, restoration of order, and preservation of the unity and integrity of the fledgling nation were of paramount importance to the new leaders of government and Constitution-makers. As a result, a highly centralized state-structure, with certain quasi-federal features was built. In order to maintain peace and order, it was felt necessary to retain the inherited 'steel-frame' of bureaucracy without any serious effort to reshape it to suit the needs of a democratic India. However, in order to ensure a modicum of fairness in the functioning of the state, apart from the independent judiciary, several Constitutional institutions like Public Service Commissions, Comptroller and Auditor General, Election Commission and Finance Commission were created. However, in keeping with the tradition of unchallenged power of the executive, the appointment of all these Constitutional functionaries was left entirely to the executive. This vast centralization meant that the fate of a whole nation, whose vastness, diversity and durability were unparalleled in human history, was left to possibly the smallest number of final decision-makers in any modern democracy.

Are Constitutions Immutable?

12. Let us now examine whether a Constitution is immutable. Ambedkar rightly said that the Constitution is only as good as the men and women who operate it. No matter how sound and impregnable the fortress of the Constitution is, the termite of human greed and follies is bound to destroy its foundations unless the best men and women assume public office and serve the nation. However, Ambedkar carried this argument too far when he asserted, "Indeed, if I may say so, if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution. What we will have to say is, that Man was vile". If this argument is taken to its logical conclusion, the Constitution cannot safeguard the republic against the depredations of those in power. The people have the responsibility to always ensure that wise and good men and women ascend to public office and only then can the Constitution be effective in ensuring good governance. In many ways this is a

rehash of the argument of Plato in 'The Republic'. If we accept this assumption, then in fact there is no need for a Constitution and all we have to do is to elect wise and good persons to public office and leave all statecraft to their judgment without restraining them by a set of rules and regulations in the name of Constitution. However it is with the recognition that such uncircumscribed and absolute power in the hands of any state functionary is not desirable have Constitutions come into being. If the Constitutional framework and rules cannot operate as checks and balances against abuse of power and to promote the greatest public good, then such a Constitution is surely flawed.

13. There are no guarantees ever in any society that only moral giants and men and women of unimpeachable integrity with an eternal sense of public purpose will always occupy public offices. Therefore wisdom demands that a set of rules and institutions is designed to ensure that persons with right qualities will operate the Constitution and once they ascend to public office they will function within certain parameters without over-stepping the limits of their authority. If a Constitution is merely a declaration of good intentions and has no role in shaping the nature of the state, then such a Constitution is a worthless scripture. Thomas Jefferson is closer to reality when he argued that Constitutions are living documents. "Some men look at Constitutions with sanctimonious reverence and deem them like the Ark of Covenant, too sacred to be touched. They ascribe to the men of the preceding age wisdom more than human and suppose what they did to be beyond amendment.... laws and institutions must go hand in hand with the progress of human mind.... As new discoveries are made, new truths discovered and manners and opinions change with the change of circumstances, institutions must advance also and keep pace with the times". Each generation has the benefit of experience of the past and should have the capacity and the right to build upon the foundations of this experience. If certain portions of the Constitution have become redundant or dysfunctional over the years, or if new problems arise and new instruments and rules are needed to face those challenges, then Constitutions must be revised. If we accept the theory of immutability of the Constitution, we are no longer talking in terms of human frailty, limits to state authority, and Constitutional checks and balances; we are in fact treading into the realm of religion and spiritualism where the authority of the divine revelation is supreme, unchallenged and immutable. Obviously in modern secular states Constitution does not have religious sanction based on divine revelation.

Values Vs Institutions

14. One common refrain in public discourse today is the decline of values in our society. Many people unfavourably compare today's youth with the generation of freedom fighters, and lament the crisis of character afflicting our society. But a careful examination reveals that perhaps decline of values is not the cause of our problems. Throughout history there were many who claimed that things were getting worse by the day. It is rare for an elderly person to admit that the world was not perfect during his youth, or that it was not a veritable hell in his old age. We

often confuse taboos with morality, and changing lifestyles, mores and attitudes with decline of values. If by values we mean the character, moral fibre and nature of a human being, or one's standards or principles, or judgment of what is important in life, then such values remain more or less constant in all ages and in all cultures. In every generation and in every society, we always have a small proportion of people who have such a fine judgment of what is important in life, and have the capacity to moderate their behaviour to suit the long-term interests of society. This ability and judgment of an individual to harmonize his immediate needs and desires with the larger good of the community is always a treasured trait, and is exhibited by only a small minority. Such wise people usually do not deviate from their path of rectitude irrespective of the circumstances in which they find themselves. Probably an equally tiny minority is utterly unconcerned with the impact of its short-term greed on the community. Such people cannot be dissuaded by mere logic and moral arguments, and have to be restrained or penalized for wrongdoing. The bulk of the people, perhaps over 90% are ordinary mortals whose behaviour depends on the risks and rewards instituted by the state. If good behaviour is rewarded and bad behaviour is penalized consistently, then the bulk of these middle-roaders will tend to conform to socially productive behaviour. If the contrary is true, and if good behaviour is not only not rewarded, but is fraught with impediments and difficulties, and if bad behaviour is not only not punished, but is rewarded consistently and extravagantly, then most people tend to indulge in behaviour which maximizes their short-term gain at the cost of long-term societal interests. That is what exactly happened in contemporary India.

15. If we assume otherwise, that people today are less moral and more selfish and crooked, then we reach a dead end. We have no way out unless the moral fibre of all citizens is strengthened, and that cannot happen by mere preaching because real life is a far more effective teacher than class rooms and religious congregations. But we do find an answer to our dilemmas if we understand that the standards and judgment of what is important in life always regulate the conduct of a minority of human beings in any society. In such a case, we can draw a distinction between values and behaviour, between character and conduct. Even if the bulk of the people are tempted by the possibility of short-term personal gains at the cost of society, we can resist such temptation once we realize there are unacceptable risks associated with such socially disruptive behaviour. That is what law is about, and that is what state is about. As Gladstone observed more than a century ago, the purpose of all government is to promote good behaviour and prevent evil. This understanding of human nature is the very *raison d'être* of our state structure, system of laws, judiciary, sovereignty and lawful use of force. If we do not accept the notion that human behaviour can be regulated and moderated independent of character and values, then all civilization collapses. Obviously this cannot be an argument against sensible education which seeks to promote the noblest values in human nature. Such education is vital, but its efficacy is limited if we do not build an institutional frame work which sustains those values by promoting and rewarding good behaviour, and by curbing and punishing bad behaviour. If we accept this world view, then the nature of laws, the institutions created to uphold

them, and most vitally, the organization of the state, and the Constitution which forms the bedrock of state are critical for societal stability, peace, harmony and justice. It necessarily follows that such a system of laws, and the Constitution on which it is founded need to be critically examined in order to find answers to the dilemmas confronting a nation.

Enduring Document

16. Let us now briefly examine the invaluable features of our Constitution which make it a noble and enduring document. Our Constitution-makers were great men and women of wisdom and virtue. They understood that man is born free, and democracy is the only moral and practical form of government. They were imbued by a sense of fair play and justice. They were not content with mere preservation of status quo and maintenance of order and stability. Our Constitution was informed by a vision of a modern, humane and just India. The preamble is a remarkable testimony to this quest for a free and fair society. In keeping with that spirit, fundamental rights were enshrined in the Constitution not as gifts of a benign ruler, but as natural rights flowing from the very concept of democracy. The Constitution recognised the need for checks and balances, and great care has been taken to prevent concentration of authority in the hands of any individual or organ of State. The special needs of Indian society and state were fully recognised, particularly keeping in view the turbulent events surrounding the creation of our republic. Harmony, unity and integrity of the nation, continuity with change, separation of powers and justice were the dominant themes of our Constitution.

17. The whole history of our Constitutional evolution from Golaknath case to Kesavananda Bharati judgment has reinforced these Constitutional values. We can now safely say that the certain basic features of our Constitutional edifice are integral to our state structure, and are inviolable. The fundamental rights which are the essence of a free society have the pride of place in our Constitutional scheme of things. Democracy, as characterised by universal adult franchise, direct elections, representative government and liberty, is the cornerstone of our republic. Ours is a system of laws, and not a rule of arbitrary despots. Therefore rule of law and independence of judiciary are integral to our state architecture. Dispersion of power is the key to preserving freedom and harmonious existence in our plural and vast society. Therefore federalism, separation of powers and independent Constitutional authorities are our vital safeguards against concentration of authority and tyranny. A modern state cannot exist without a moral purpose. Democratic discourse and freedom of choice constantly revitalize a nation, and help us reinterpret that moral purpose from time to time. There are no eternal truths in public policy. Policies are thus wisely left to political contention in the battlefield of public opinion, and are mediated by free and fair elections. The Constitution-makers nevertheless gave us the benefit of their wisdom and laid down principles of state policy to help our nascent democracy chart its turbulent course in early years. All in all, our Constitution is a wise and time-tested document, whose basic premises and

fundamental principles are as valid today as they were fifty years ago. The strength of our Constitution is validated by our impressive record as a democracy.

Impressive Record

18. Among the nations liberated after the Second World War, India has a unique record of successive elections and stable and peaceful democracy. Many countries which emerged as nascent democracies with high hopes over the past fifty years have fast succumbed to authoritarian impulses and army coups. The experiences of our own neighbours – Pakistan and Bangladesh – illustrate the difficulties in running a democracy. Indian democracy has shown refreshing capacity to adapt to conditions and uphold democratic institutions and practices. People have been voting in large numbers, and democracy has broadened its appeal, though it may not have struck deep enough roots. There is wider representation of various castes and social groups in legislatures. By all accounts, the bold experiment of universal adult franchise since the inception of our republic has paid off.
19. However, it will be useful to pause and examine the record of post-colonial India in the light of the democratic institutions and practices as commonly understood in contemporary liberal democratic world. Myron Weiner has listed four such institutions and practices as follows
 - i) Government leaders are chosen in competitive elections in which there are opposition political parties.
 - ii) Political parties – including opponents of government – have the right to openly seek public support. They have access to press, freedom of assembly, freedom of speech and freedom from arbitrary arrest.
 - iii) Governments defeated in elections step down; losers are not punished by winners; defeated leaders are not punished unless in the act of governance they have broken the law; their punishment is based on due process.
 - iv) Elected governments are not figureheads; they exercise power and make policies and are accountable to the electors – not to the military, the monarchy, the bureaucracy, or an oligarchy.
20. Judged by these yardsticks, many countries, while having elections, fail to qualify at varying periods of time as true liberal democracies (Alan Ware). Zambia and Argentina had for sometime competitive elections for public office, but gave unlimited power to elected leaders. In Argentina for some time there was also limited electoral competition with major political forces banned. In apartheid South Africa and white-dominated Rhodesia, while there were regular elections, large sections of people were forcibly prevented from participating in them. In fact, even in the Southern states of the United States, the blacks, while legally permitted to vote, were in practice denied the franchise until the Civil Rights Movement of the 1960s. In countries like Mexico for decades, and in Pakistan and Bangladesh often, there was theoretical electoral competition, but massive state sponsored rigging was practiced. In Turkey, Pakistan, Bangladesh, and Philippines periods of electoral competition are interspersed with authoritarianism. In Algeria and Burma

there was electoral competition but the winning parties were prevented from assuming office, and are in fact persecuted. In countries like Iraq some parties exist, with no electoral competition. Erstwhile Soviet Union, and most of the Eastern European countries until their adoption of democracy about a decade ago, had authoritarian communist regimes in which only one party could control government. China continues to be under an authoritarian, one-party rule. Several South East Asian countries too have witnessed limited electoral competition or outright authoritarianism for decades.

21. Judged by these standards, as Myron Weiner points out, "India is one of a handful of post-colonial countries that could be regarded as having a stable democratic regime. The list is very small and one could quarrel with the inclusion of several of the countries in it: Malaysia, Sri Lanka, Jamaica, Trinidad / Tobago, Papua New Guinea, and a variety of mini-states: Bahama Islands, Barbados, Botswana, Gambia, Mauritius and Surinam. In the main, post-colonial regimes have been one-party states, military bureaucracies and dictatorships, communist, or personalized autocracies. The new regimes typically restrict opposition parties, limit freedom of assembly and freedom of the press, do not permit competitive elections, restrain the judiciary from performing an independent role, and limit freedoms of their citizens in a variety of ways – to speak out, to travel abroad, to criticize the regime and to change the government peacefully. In most post-colonial regimes, political participation is restricted and leaders are not held accountable; and, in the worst cases, governments are tyrannical. India, along with a handful of smaller countries, is a notable exception."

Aberrations

22. However, there have been several aberrations from time to time in our commitment to democratic institutions and practices. The most notorious example is the period of "internal emergency" between 1975 and 1977. Civil liberties and habeas corpus were suspended during the period and thousands were incarcerated for no other reason except that they were the opponents of the regime. Elected legislators and leaders of opposition were all detained without charges or trial. Opposition political parties had no access to media. Freedom of press was suspended and press was subjected to pre-censorship. The 42nd Amendment allowed the Parliament to suspend elections and extend its own life indefinitely – one year at a time. In fact, the life of the 5th Lok Sabha was extended thus, and elections were postponed. However, it must be said in favour of Mrs Gandhi, the architect of that emergency, that she did voluntarily call for elections, though after the expiry of the natural term of the Lok Sabha, and lifted the curbs on most freedoms. The elections in 1977 were by and large free and fair, and the transfer of power from the defeated ruling Congress Party to the newly elected Janata Party was peaceful and orderly.
23. There have been many other aberrations too. Flawed elections have often reduced the legitimacy of our democracy. Severely flawed electoral rolls, polling irregularities, vote-buying, unaccountable use of money in elections, criminalization

of politics and the curse of defections for personal gain have undermined the sanctity of elections. For a long period, the state-owned electronic media have been rigorously controlled by the government of the day. The autocratic and unaccountable control of parties has reduced them to personal estates and private fiefdoms, undermining the political process. The well-intentioned but poorly designed Tenth Schedule of the Constitution has reduced legislators to a status of serfdom. All these undemocratic institutions and practices have severely eroded the legitimacy of governments and legislatures.

24. Certain recent trends have been even more disturbing. There is a perceptible and alarming decline in the quality of debate in legislatures. Much of legislative business and reviewing the work of government has become perfunctory. Legislatures have become theatres of the absurd to catch the attention of the media and the public, with little sense of purpose or dignity. Changes of governments, particularly in States, have been often divorced from the people's mandates. Midnight parleys and palace coups, but not public opinion or policy differences, have often led to change of governments. The ouster of NTR's government in Andhra Pradesh and Farooq Abdulla's government in Kashmir in 1984, and the unseating of NTR's government in Andhra Pradesh in 1995 all had nothing to do with people's mandate or policy differences. There were scores of other such changes in governments engineered by palace coups and politics of defection for personal gain. However, it must be stated that all these downfalls of governments were Constitutionally and technically valid, even though their democratic legitimacy was questionable. And more importantly, peaceful transfer of power has been the norm. Even after the elections to the 6th Lok Sabha, when the first transfer of power took place in the Union government, the change was peaceful and dignified despite the heat and passion generated by the authoritarianism of the emergency period.
25. A more disturbing trend is in evidence in recent times. The brief episode of Jagadambica Pal government in Uttar Pradesh in February 1998 showed that even peaceful and orderly transfer of power cannot be taken for granted any longer. The television cameras brought to millions of drawing rooms the vivid images of Jagadambica Pal being forcibly evicted literally from the chief minister's official chair by a court directive. The tension, drama, and fisticuffs, which accompanied the formation of the first governments in the newly formed States of Chattisgarh and Jarkhand indicate further erosion of the democratic tradition of peaceful and dignified transfer of power.
26. The infamous JMM bribery case of proven acceptance of bribes to extend support to the government on the floor of the Lok Sabha is a telling illustration of this tendency to support or bring down governments for a price. Happily in India, losing politicians are not victimised, jailed or beheaded as is the unfortunate practice in many post-colonial nations, including neighboring Pakistan and Bangladesh. However, public officials are not held accountable either. The system never allowed a government leader to be punished for misdeeds or corruption while in office. The

rare instances of chargesheeting, trial, or conviction have invariably been well after they lost power, and always while their opponents are in power. Launching of prosecution has always been selective, sparing the ruling parties and aimed against a rare opposition politician

27. The most important infirmity of the elected governments is in the realm of governance. While elected governments in India are not figureheads, their capacity to really make a difference has proved to be marginal at best. If we play a mind game and assume that all the legislators who have won a general election have actually lost, and instead their immediate rivals won, the reality is that the quality of governance would be virtually unchanged, and the change of government would go totally unnoticed. The only visible difference with change of government is the new set of faces in public office, and the improved fortunes of individuals playing the power game! This woodenness in our governance process means that no matter who wins or loses in the election, the people always end up as losers. The institutional rigidities in our parliamentary democracy have thus ensured that real governance reform, bureaucratic accountability or significant shifts of public expenditure are virtually impossible. The room for maneuvering of any government is extraordinarily limited, and the system is locked in a vicious cycle. The incapacity of the governments to address the deepening fiscal crisis is a case in point. The fight against corruption, the struggle for electoral reform, the measures for speedy and efficient justice, the efforts to decentralize power, and the attempts to enforce bureaucratic accountability have all been stymied by these institutional rigidities and consequent governance failure.

Key Ingredients of Democracy

28. While the record of our parliamentary democracy has been fair when judged by Myron Weiner's postulates, our polity emerges poorly when judged by more exacting standards of democracy. There are five key ingredients of democratic polity: freedom, self-governance, empowerment of citizens, rule of law and self-correcting institutions of state. Let us briefly examine the performance of Indian polity in the light of these standards.
- **Freedom**, in an elementary sense, is the right of an individual to do as he or she pleases, as long as his actions do not impinge on the freedom of others. While the Constitution and law have guaranteed these freedoms in a fair measure to citizens, in reality freedom is undermined by the unchecked power of parties and state functionaries to paralyze society at will, to appropriate resources, and to blackmail or bully citizens and groups. Institutional maladies including inaccessible school education and primary health care, delayed justice, unaccountable police, unchecked crime, secrecy in government and inefficient public services have severely eroded our freedoms despite Constitutional guarantees.
 - **Self-governance** is the right of citizens to govern themselves directly or indirectly. Representative democracy means that the elected legislators and governments should be fully accountable to citizens. However, autocratic

political parties, flawed electoral process, limited and often unhappy choice of candidates, uninformed and distorted public discourse, criminalisation of politics, marginalization of citizens and over-centralization have all reduced our self-governance to a mockery.

- **Empowerment** is the ability of citizens to influence the course of events on a sustained basis and to make meaningful decisions on matters of governance having impact on their own lives. In effect, people should always continue to remain sovereigns. However, rampant corruption, hostility to public participation in governance, centralization, secrecy, red tape, and a culture of touts and middlemen with the backing of powerful party organizations have denied people any meaningful degree of empowerment.
- **Rule of law** is the concept of people being governed by law, and all citizens, irrespective of station and rank, being subject to the same laws to the same extent. However, centralized and autocratic political party functioning, flawed electoral system, highly opaque and secretive functioning, habitual abuse of executive authority, ubiquitous patronage system, VIP culture in every public service, gross failure of public order, primacy of political agents, influence-peddlers, touts and rabble rousers in government decision making at the cost of non-partisan citizens, political control of crime investigation and the tardy and inefficient justice system all make rule of law virtually non-existent in our society.
- **Self-correcting mechanisms** give institutions of state and polity the capacity to learn from past experience and to constantly improve themselves in order to serve the people better. Our incapacity to design and operate the institutional correctives, Constitutional functionaries being amenable to political influence, the secrecy in government, tardy and inefficient justice system, a political system dependent on uncontrolled corruption, and the moribund party structure incapable of attracting the best elements of society have made sure that the decline of the Indian state is progressive. This impairment of self-correcting mechanisms contributed to near-collapse of our governance structure, and made reversal of the trend within the existing framework a Herculean task.

29. Let us now examine some of the lessons learnt from past experience. While the Constitution has stood the test of time, and our democracy has proved to be robust and resilient, certain distortions and institutional rigidities have crept in over a period of time. I would like to focus on three specific issues which need to be addressed in contemporary India. They relate to the politics of fiefdoms and representational distortions; inadequate horizontal separation of powers, and legislators functioning as disguised executives making honesty in public life and political survival increasingly incompatible; and high degree of centralization without effective people's participation and local governance.

Problems of FPTP System

30. Article 81 and 170 of the Constitution provide for election of members to Lok Sabha and State Legislative Assembly respectively from territorial constituencies

with a plurality of vote. In this first-past-the post system, the candidates have enormous incentive to resort to every trick in the trade in order to edge ahead of their rivals. In the winner-take-all system in a plural society, all that matters is to somehow ensure the support of local traditional power groups and oligarchies. The electoral malpractices which have become endemic in our system made it easy for a few families to dominate the political scene in most constituencies. The party has become merely a label to garner the vote. Real power is concentrated in the hands of a few individuals and families. Little dynasties have sprung up in many pockets of India. Their political and bureaucratic connections, money power largely acquired through state patronage and corruption, nexus between politics and crime, and local caste domination help perpetuation of politics of fiefdoms. A constituency is seen as a modern Zamindari, and no matter which party is elected to office, power alternates only between a few select individuals and families. Politics has truly become an entrenched profession, and great money-spinner.

31. The flaws in electoral system are well-documented and widely understood. There is a crying need for major electoral reforms. Voter registration should be made transparent and accessible. Criminalization of politics needs to be checked urgently. Illegitimate and unaccounted money power needs to be curbed and far-reaching political funding reforms should be introduced. Political parties have to be democratised, so that unaccountable coteries and feudal oligarchies will not perpetuate their stranglehold over state power. All these electoral reforms are long overdue, and once introduced will significantly improve the health of our polity. However, the situation is far more complex and mere electoral reforms cannot restore health and sanity to politics. Many political players now enjoy a near monopoly of power, and they exercise it for private gain with impunity. Unbridled corruption and arbitrary exercise of power have given them control of enormous resources, and political funding reform, however wise and ingenious, cannot regulate their election expenditure and vote-buying. The FPTP system which we adopted largely because we were familiar with the British practices has led to serious distortions of representation.
32. FPTP system has the propensity to exaggerate the importance of larger parties and undermining the influence of the majority of voters. Actually no single party at the national level ever obtained the support of the majority of voters who went to polls, and yet governments have been formed with overwhelming majorities in Lok Sabha several times. Large, but scattered social groups are always underrepresented. The consequent marginalization of large segments of public opinion in a plural society has evidently led to ghettoization of numerically important groups like minorities and dalits. In order to overcome the problem, demands for reservation of constituencies have been raised from time to time. Even such reservation failed to ensure justice to Scheduled Castes. As the seats are reserved almost always in areas where SCs are in a numerical minority, the candidates put up by major parties do not enjoy independent political base, and often have no real political clout. Reservation is often reduced to tokenism. In any case, the political system cannot extend such constituency reservation on a large scale for fear of reducing elections

to a quirk of fate by draw of lots as rotation of seats becomes inevitable with large-scale reservation. Large-scale reservation will also undermine the legitimacy of democratic process and may invite backlash from the other segments of the population, thus proving counter productive.

33. Also in FPTP system, a party is desperate to somehow win the election in the constituency by all means fair or foul, as each seat becomes critical in the legislative numbers game to form government. For the local candidate, who is often a symbol of dominance of a local caste or social group or faction, victory at the hustings is of critical importance to acquire influence and extend patronage. Thus, both the candidate and the party have a great stake in the constituency election, unmindful of consequences in other constituencies across the region or the country. The ugly practices adopted by a party or candidate at the constituency level become somehow acceptable in the quest for electoral success. Once a candidate obtains nomination of a major party, he and his caste or group often make it an issue of personal prestige to be elected in the winner-take-all electoral and power game. Use of exorbitant amounts of unaccounted money, vote-buying, bribing officials, hiring hoodlums, criminalization of politics, deployment of muscle power to brow beat voters and rigging of polls – all become the norm in most constituencies. As election in each constituency runs on similar lines, the parties and candidates are not inhibited by the fear that their illegitimate efforts to win a few constituencies might undermine the larger objective of enhancing the voting share in a whole State or the nation.
34. Another feature of the FPTP system is that reform of the polity becomes more and more difficult. Genuinely reformist groups with significant public support scattered across the State or the country, but with limited resources and no desire to resort to illegitimate practices have no realistic chances of success in the FPTP system. As a result, truly public-spirited groups tend to wither away. Only entrenched parties willing to raise resources illegally, and deploy muscle power and money power in abundance can remain in the fray. Also extremist fringe elements which can raise money and resort to violent methods can gain political influence in pockets where they are strong. In a system in which winning the seat by somehow obtaining the largest number of votes is all-important, honest individuals or reform parties fighting against electoral malpractices and corruption have very little chance of success. This tends to perpetuate the status quo, and people have to live with the often unhappy choice offered between candidates and parties resorting to the same ugly practices and misgovernance. Political process in India has thus become increasingly incestuous. Even as power alternates between parties, the nature of the power game and the quality of governance remain unaltered, undermining the legitimacy of representation and faith in democratic system.

Rationale for PR

35. With a view to correct many of these distortions and encourage equitable representation and inclusion of marginalized groups in the political process, several

scholars, activists and opinion makers have been arguing in favour of proportional representation (PR). As Michael Dummett explains, "The rationale of PR is obvious. The principle is that the seats in Parliament (legislature) should be allotted to the political parties in the same proportion – or as near to it as is feasible – as support for those parties is divided among the national electorate. PR is often applied with a threshold. If a party has failed to obtain a certain minimum percentage of support – often fixed at 5 percent – it will get no representation in Parliament, at least unless it has succeeded in getting one or more candidates elected to represent constituencies; parliamentary seats are then divided among the other political parties in the same proportion as their national support. The principal purpose of threshold is to deny representation to extremist parties.

36. "The rationale of PR is, plainly, that each parliamentary seat should represent approximately the same proportion of the national electorate. This, the advocates of PR maintain, is the only fair principle to follow in what proclaims itself to be a representative democracy. It is unjust when six times as many votes are needed to elect each MP of one party as are needed for each MP of another. In such a case, supporters of the first party are indisputably underrepresented, and those of the second correspondingly over-represented".

37. PR is by far the most popular form of representation in democracies all over the world. In 1997, Andre Blais and Louis Massicotte (Chapter 2 Electoral Systems – 'Comparing Democracies' ed:Lawrence Le Duc, Richard G Niemi and Pippa Norris) listed 13 countries which followed plurality systems or FPTP systems of the kind we practice in India. Of these, 10 countries including India, Pakistan (in 1997), Bangladesh, the UK, the US, Canada, Philippines, Malawi, Nepal and Zambia follow plurality system in single-member constituencies. Only four countries follow majority systems involving either run-off elections or alternative vote (STV). Of these, France follows the majority-plurality system for legislative elections, involving a run-off election in case no candidate obtains a majority on first ballot, and on the second ballot the winner is decided by plurality. Mali and Ukraine follow majority run-off system, and Australia follows the STV system or alternative vote, whereby the electors give preferences to all the candidates and votes of eliminated candidates are transferred to other candidates. As opposed to this, as many as 36 countries follow some form of PR system. 25 countries follow pure PR system. 24 of them follow List system and one country, Ireland follows the STV system. Ten countries follow mixed systems with a combination of PR and plurality system. One country, Hungary follows a combination of PR with majority system.

John Stuart Mill on Proportional Representation

38. The great liberal democratic thinker John Stuart Mill has critically examined the issue of proportional representation vis-à-vis FPTP system. It would be extremely useful to quote J S Mill at some length from Chapter VII of Representative Government (1861).

39. *“Two very different ideas are usually confounded under the name democracy. The pure idea of democracy, according to its definition, is the government of the whole people by the whole people, equally represented. Democracy as commonly conceived and hitherto practiced, is the government of the whole people by a mere majority of the people, exclusively represented. The former is synonymous with the equality of all citizens; the latter, strangely confounded with it, is a government of privilege, in favor of the numerical majority, who alone possess practically any voice in the State. This is the inevitable consequence of the manner in which the votes are now taken, the complete disenfranchisement of minorities.....”*
40. *“.....That the minority must yield to the majority, the smaller number to the greater, is a familiar idea; and accordingly men think there is no necessity for using their minds any further, and it does not occur to them that there is any medium between allowing the smaller number to be equally powerful with the greater, and blotting out the smaller number altogether. In a representative body actually deliberating, the minority must of course be overruled; and in an equal democracy (since the opinions of the constituents when they insist on them, determine those of the representative body) the majority of the people, through their representatives, will outvote and prevail over the minority and their representatives. But does it follow the minority should have no representatives at all? Because the majority ought to prevail over the minority, must the majority have all the votes, the minority none? Is it necessary that the minority should not even be heard? Nothing but habit and old association can reconcile any reasonable being to the needless injustice. In a really equal democracy, every or any section would be represented, not disproportionately but proportionately. As majority of the electors would always have a majority of the representatives; but a minority of the electors would always have a minority of the representatives. Man for man, they would be as fully represented as the majority. Unless they are, there is not equal government, but a government of inequality and privilege; one part of the people rule over the rest; there is a party whose fair and equal share of influence in the representation is withheld from them contrary to all just government, but above all, contrary to the principle of democracy, which professes equality as its very root and foundation.*
41. *“The injustice and violation of principle are not less flagrant because those who suffer by them are a minority; for there is not equal suffrage where every single individual does not count for as much as any other single individual in the community. But it is not only a minority who suffer. Democracy, thus constituted, does not even attain its ostensible object, that of giving the powers of government in all cases to the numerical majority. It does something every different: it gives them to a majority of the majority; who may be, and often are, but a minority of the whole. . . . If democracy means the certain ascendancy of the majority, there are no means of insuring that, but by allowing every individual figure to tell equally in the summing up. Any minority left out, either purposely or by the play of the machinery, gives the power not to the majority, but to a minority in some other part of the scale.*

42. *“And it is not solely through the votes of minorities that this system of election would raise the intellectual standard of the House of Commons. Majorities would be compelled to look out for members of a much higher calibre. When the individuals composing the majority would no longer be reduced to Hobson's choice, of either voting for the person brought forward by their local leaders, or not voting at all; when the nominees of the leaders would have to encounter the competition not solely of the candidate of the minority, but of all the men of established reputation in the country who were willing to serve; it would be impossible any longer to foist upon the electors the first person who presents himself with the catchwords of the party in his mouth, and three or four thousand pounds in his pocket. The majority would insist on having a candidate worthy of their choice, or they would carry their votes somewhere else.*
43. *“[With proportional representation] the champions of unpopular doctrines would not put forth their arguments merely in books and periodicals, read only by their own side; the opposing ranks would meet face to face to hand, and there would be a fair comparison of their intellectual strength, in the presence of the country. It would then be found out whether the opinion which prevailed by counting votes, would also prevail if the votes were weighted as well as counted. The multitude have often a true instinct for distinguishing an able man, when he has the means of displaying his ability in a fair field before them. If such a man fails to obtain at least some portion of his just weight, it is through institutions or usages which keep him out of sight.*
44. *“[Some critics of proportional representation] are unable to reconcile themselves to the loss of what they term the local character of the representation. A nation does not seem to them to consist of persons, but of artificial units, the creation of geography and statistics. Parliament must represent towns and counties, not human beings. But no one seeks to annihilate towns and counties. Towns and counties, it may be presumed, are represented, when the human beings who inhabit them are represented. Local feelings cannot exist without somebody who feels them; nor local interests without somebody interested in them. If the human beings whose feelings and interests these are, have their proper share of representation, these feelings and interests are represented, in common with all other feelings and interests of those persons. But I cannot see why the feelings and interests which arrange mankind according to localities, should be the only ones thought worthy of being represented; or why people who have other feelings and interests, which they value more than they do their geographical ones, should be restricted to these as the sole principle of their political classification.”*

Empirical Support in Favour of PR

45. Robert Richie and Steven Hill in their essay “The case for Proportional Representation” pointed out that there is empirical support for arguments in favour of PR.

46. "Mill's majoritarian argument for PR gains empirical support from a recent statistical comparison of 12 democracies in Europe. (See John Huber and G Bingham Powell, "Congruence Between Citizens and Policymakers in Two Visions of Liberal Democracy", *World Politics* (April 1994 - 291-326) John Huber and G. Bingham Powell contrast a "Proportionate Influence Vision" of democracy, in which "elections are designed to produce legislatures that reflect the preferences of all citizens," with the "Majority Control Vision," in which "democratic elections are designed to create strong, single-party majority governments that are essentially unconstrained by other parties in the policy-making process." They conclude that "governments in the Proportionate Influence systems are on average significantly closer to their median voter than are governments in the Majority Control and Mixed systems. . . . If voters are presented with a wide range of choices and electoral outcomes are proportional, governments tend to be closer to the median."
47. In short, governance is more likely to take place at the center of the political spectrum with PR, since the electorate is fully represented and voters are able to express a wider range of preferences. At the same time, fair representation of the margins provides a mechanism to transform policy by shifting the political center. Opposition voices will be heard, and their ideas will be far more likely to be debated. If those ideas win growing support, the major parties will adjust accordingly in order to hold onto their supporters.
48. Richie and Hill have also succinctly argued that there are other reasons to favour proportional representation.
- PR increases voter turnout, as "winning fair representation is dependent on voter turnout. Because nearly every vote will help a party win more seats, voters have more incentive to participate, and parties have incentives to mobilize their supporters. Moreover, parties and other electoral organizations have strong incentives to keep their supporters informed, and informed citizens are more likely to vote". For these reasons, voter turnout is generally estimated to be 10-12 percent higher in nations with PR than in similar nations using winner-take-all elections. (Arend Lijphart: *Unequal Participation: Democracy's unresolved Dilemma*", in *American Political Science Review*, March 1997).
 - PR also provides better representation for racial minorities. "By building from a fundamental principle of political fairness, PR could secure voting rights to racial minorities, without targeting minority voters. In addition to winning a fair share of seats, minorities would have greater opportunities to negotiate for influence, because they could "swing" among parties."
 - PR also increases the number of women in office. "Women win seats in significantly higher percentages in multi-seat districts (PR system) than in one-seat districts. The major reasons for this difference are that women are more likely to run and voters are more likely to seek gender balance when there is more than one seat to fill. Because PR expands options, PR systems give women additional leverage to force major parties to support more women candidates. In 1994, a threat by women supporters of major parties in Sweden to

form a new women's party led to women winning 41 percent of seats because major parties recruited more women candidates. New Zealand, Italy, and Germany are among a growing number of democracies that use systems with a mix of winner-take-all districts and PR seats. It is instructive that women in all three countries are three times more likely to win seats elected by PR than to win in one-seat districts.

- PR also ends gerrymandering, or drawing constituency boundaries for political purposes. "PR makes gerrymandering of any sort far more difficult. The smaller the percentage of votes that can be "wasted" on losing candidates – 49 percent in a winner-take-all race (more in a multi-party race), but less than 20 percent in a five-seat PR election and less than 10 percent in a 10-seat PR election, the harder it is for legislators to manipulate electoral outcomes".

Best-suited Model for India

49. The German system is the simplest one combining the best features of FPTP system with PR distribution in a corrective way, and is therefore ideally suited for Indian conditions. We need to adapt proportional representation to suit our special requirements. Given the largeness of the country, the need to freeze the seats in Lok Sabha State-wise, and the imperatives of democratic choice of candidates on the party list, it is best to make the State the territorial unit for proportional representation and determining the voting threshold. As 5% is too low a threshold, and is likely to lead to fragmentation of parties, a minimum 10% threshold is desirable in large States with 10 or more members of Lok Sabha, and a higher percentage of vote in smaller states determined by the formula: $100 \div \text{number of Lok Sabha seats}$. Parties with fewer votes are disqualified while distributing the PR seats. All registered parties may offer their lists for PR distribution. This is the only fair and practical method, since prior disqualification on the basis of past record or absence of earlier record would be discriminatory, undemocratic and plainly unjust if the party does cross the threshold in the current election. The threshold of 10% in large States and more in smaller States is a sufficient safeguard against proliferation of parties in the legislatures. If a recognized party fails to cross the threshold and unrecognized party does cross it, and if both are disqualified for different reasons, it would be a recipe for political strife. Therefore there should be fair and uniform standards applicable to all registered parties. Recognised parties may however get other recognition-related benefits including state-funding, if any. Half of the Lok Sabha seats may be filled by the present method of FPTP election in single-member territorial constituencies. For this purpose, the Lok Sabha constituencies in each State may be reorganized. All such seats won by FPTP system shall be retained by the parties, irrespective of whether the party crossed the threshold of votes for PR distribution of seats in those States or not. There shall be only one threshold for PR distribution, and that is the percentage of votes obtained in the State, and not the minimum number of, say 3 seats, won in FPTP system. This is necessary to prevent proliferation of parties in large, plural society. If a small party wins a few seats in a local area on the basis of its sectarian appeal to a caste or religion, it will still be unable to get the proportional representation in the State unless it crosses a high

threshold of 10% of the valid votes or more. The PR seats, which constitute 50% of the total strength of the legislature, shall be distributed among parties which cross the threshold. To determine the party's voting percentage, all votes cast in the second vote (party ballot) are counted. Two votes, one for the candidate, and other for the party will give voters a genuine choice to select a desirable candidate and an acceptable party. Candidates in constituencies should then strive to appeal to all sections, without merely relying on the party, and the party should broaden its appeal without merely encasing the charisma of local candidates.

50. In conclusion, the requirements of fair representation can be met by a corrective method of PR combined with constituency based FPTP system of election to retain the best features of both systems. The majority-run off system is probably too cumbersome and impractical to be applied in India, and may lead to further marginalization of scattered groups. Election in multi-member constituencies is a feasible proposition and is much fairer than FPTP system, and offers a greater choice to voters, and forces competition among candidates of the same party, and between parties. But when it is based on plurality and not proportionality, there is a danger that the candidates with greater muscle and money power will eliminate all other candidates. Therefore multi-member electoral districts with party lists chosen democratically, and seats distributed by PR system is the ideal combination. This is exactly what PR system with manageable electoral districts (of say 10 seats) and party lists is. In other words PR system combines all the best features of both. And when this is combined with half the seats filled by FPTP, the best of every system is retained. Alternative vote, by which the last candidate is eliminated and votes are transferred to other candidates based on second preference and so on, is fair but impractical, given the low level of literacy and very complicated counting. Similarly the single transferable vote system, by which the surplus votes of the winning candidates in multi-member candidates are transferred to others based on second preferences and so on, until all the seats are filled, is again impractical and cumbersome on account of voters' illiteracy and very complicated and delayed counting methods. Given all these circumstances, corrective PR combined with FPTP system, with 50% seats filled by each method, and two votes for each voter, one for a candidate, and the other for a party, with party lists chosen democratically in electoral districts is the most appropriate model for adoption in India. There may be a negative vote column provided for FPTP election to apply moral pressure on parties to nominate acceptable candidates and to draw more voters to polling. If the negative votes exceed votes of every candidate, then there can be a fresh election with new candidates.

Legislator as Disguised Executive

51. Let me now turn to second major problem I wish to address today – that of legislator as disguised executive in states in our system of drawing government from legislature, and surviving only with its support. There is ample evidence to show that the parliamentary executive model which served to unite India has actually proved to be counterproductive in States. One of the main causes of this

decline in politics and political discourse is the fact that the legislative office is not perceived by the candidates as well as the general public as one of law-making and keeping the executive under check. Legislators are seen by the people, and themselves, as the disguised executive. The Indian Union and even States are too large for any social group to gain complete dominance or decisive influence. The sheer diversity of our society ensures that no group can really exercise control over a whole State or nation. When we come to the constituency level, it is an altogether different proposition. The local dominant castes or groups can, and do, exercise near-total control. When these groups elect the disguised executive in the form of a legislator, what they are looking for is control of the executive branch of government through that legislator. There is little concern for law making. Those few people's representatives who discharge their legitimate public duties fairly and diligently are likely to either lose support of dominant groups, or fall prey to the rejection vote in the election. What the dominant groups want is a legislator who can get a local police or revenue official transferred, who can intervene on behalf of the accused in a criminal case, or at best one who can be a dispenser of patronage in the form of many government welfare schemes. In our Constitutional scheme of things, these legislators' support is critical for the survival of the government. Rarely is this support given on the basis of principles or ideology or public opinion. Invariably, there is a price extracted for such support, which can be in many forms. The executive is then at the mercy of the legislators, on whose continued good will and support its survival depends. As a consequence, integrity and survival in power are not compatible any longer.

52. In addition, as the local legislator is elected more as a representative of the dominant castes or groups, he doesn't stand for an ideology or a mandate or poll platform. His main purpose is to further the interests of the dominant groups or castes as a legislator, or as a minister, if he can muster enough support to become one. As the people have to choose between two or three contenders of similar unsavory background, the choice is often very unsatisfactory. As the political executive is drawn from those elected in this process, it is almost always certain that we have ministers, who have neither common purpose, nor larger vision, nor deep understanding of public affairs. The council of ministers is very often a loose collection of warring tribes, perpetually feuding for crumbs of office or to further their own group or caste interests. This situation, coupled with the public anger and frustration with the political process as evidenced by the rejection vote, makes it impossible to have any honest or far-sighted governance.
53. All governance is then reduced to patronage, and transfers and postings of bureaucrats. As Robert Wade pointed out, there is a well-developed market for public office in India. Money habitually changes hands for placement and continuity of public servants at various levels. These public servants in turn have to collect 'rent' from the public. The hafta paid to a policeman, the mamool charged by the excise official, the bribe collected by the revenue functionary or the corruption of a transport officer are all part of a well-integrated, well-organised structure. This vicious cycle of money power, bureaucratic placements, political

power, muscle power and election battles based on dominance of local factions is extremely well-entrenched and resilient and cannot be dismantled by a few good deeds of a few good people or by incremental reform or tinkering with the system. It is this vicious cycle that leads to the pervasive corruption that large sections of citizenry in all walks of life are disenchanting with, and which is enfeebling ordinary citizens. With the exclusion of the people from the political process or governance, except for voting once in a while in favour of a candidate who is imposed on them, most people are sullen, resentful, angry and frustrated. No matter how many times they reject a government or party, no matter how often they give vent to their anger and frustration through public protests, demonstrations, and at times violence, the real character of governance does not seem to change; the local public servant behaves in the same manner as always — corrupt, greedy, arrogant and arbitrary.

54. Often the fear of rejection compels governments to adopt highly short-sighted and populist measures. However, as a general rule they do not help, as the exchequer is soon depleted, and the people have no respect for a government that is venal, no matter how many direct subsidies it doles out. In any case, they realise that even when a government makes earnest attempts to improve their lot, its power to do good is extremely limited, while its capacity for harming public interest is enormous. A large and important part of people's lives is neither touched by the government, nor are the people given control over it to guide their own destinies. Many perceptive observers noted this extraordinary crisis of the Indian polity over the years and commented on the ungovernability of India. Galbraith, for instance characterised India as a "functioning anarchy" decades ago.

Captive Parliamentary Executive in States

55. Given this dominance of local entrenched groups and the culture of disguised executive, two consequences follow. Firstly elections at the local level are often a test of supremacy of the local oligarchies, and public opinion and popular sovereignty are a far cry given the dominance of the local elites. As the legislative office is key to executive power at the State level, getting elected as a MLA is of crucial importance for political survival. Therefore all means – money, muscle power, other inducements, threats, brute force – are liberally employed to get elected locally. Party affiliation and ideologies have no real meaning to these local oligarchies, and what matters is supremacy in faction struggle. Thus the parliamentary executive system has exacerbated electoral irregularities, voting fraud and vote buying at the assembly constituency level. Secondly, the legislator is elected not to legislate and monitor the government's functioning, but to exercise executive authority in legislator's garb. As a result, the legislator's role in routine executive sphere is awesome. Even in a directly elected executive with separation of powers, the legislator does exercise enormous influence. But that influence is in the legislative sphere and in budget allocations. The executive is forced to negotiate with the legislators to get their support for the enactment of key legislations and for budgetary appropriation. The legislators often use this leverage skillfully to help promote investment and job creation in their constituencies, hence the so-called

pork-barreling. But this power of legislators where separation of powers is in vogue is inevitable and salutary. It is a part of the negotiation of spheres of influence between the executive and legislature, and is addressed by the institutional checks and balances. While the legislators press for a favoured policy or allocation of resources to a particular sector or location of projects in a State or region, they cannot influence day-to-day executive functioning and specific decisions and transfers and postings of officials. Legislators' interference in executive functioning is thus self-limiting. In the ultimate analysis a group of legislators cannot threaten to withdraw support to the executive and affect its continued survival. As the executive is directly elected by the people, and owes its mandate to the voters and not to the capricious majority in the legislature, the executive cannot be browbeaten beyond a point. But in a parliamentary executive model, every decision is captive to the whims or self-interest of individual legislators.

Reversal of Roles

56. In fact in States, parliamentary executive system has led to a curious reversal of roles. The legislator's real concern is to function as the disguised and unaccounted executive. Therefore he has little concern for legislation. Laws are often enacted perfunctorily, without the serious attention they deserve. Budgets are approved with utmost casualness, all the legislative bluff and bluster ultimately signifying nothing. A strong chief minister with comfortable majority in the legislature, particularly with a commanding role in his party, can ride roughshod over both his cabinet colleagues and the legislature. With complete control of the legislature and executive, the chief minister can be a highly authoritarian figure. The executive thus completely controls the legislative agenda, and the legislators in turn control the local executive decisions in an unaccountable manner. This development has led to another reversal of roles in day-to-day administration. The elected political executive is busy with day-to-day management of politics of survival. Therefore much of the executive's time and energy are spent in retaining the legislators' support, leaving little attention to governance and policy making. Therefore much of the policy making, except in respect of short-term populist policies, is left to the bureaucracy. Thus, the politician is content to pay attention to day-to-day policy implementation, patronage and transfers and postings, and the bureaucracy is fulfilling the task of policy formulation. This unhealthy tendency has severely undermined our democracy and made our political process increasingly self-serving and unaccountable.
57. With this confusion of roles, blame-throwing and finding alibis for non-performance have become endemic. As authority is often divorced from accountability, and de facto power is delinked from de jure authority, accountability suffered. While things deteriorate, there is no one to assume responsibility. This again resulted in short-term populism and high centralization of power through patronage-distribution. In view of the systemic nature of the problem, electoral verdicts and change of governments do not necessarily improve the situation. As high and illegitimate expenditure is the necessary accompaniment of the

constituency-based election of the legislator as disguised political executive, power is bound to be abused for private gain. Corruption is thus ubiquitous as most public services are controlled by rent-seekers in this vicious cycle of 'dangerously stable equilibrium', as described by Robert Wade. Elections often change the players, but the rules of the game are unchanged.

58. As explained earlier, given the compulsions of the patronage-based political culture dominated by local oligarchies, the talent available in State legislatures for executive office is extremely inadequate. As the parliamentary executive can be drawn only from the legislature, the quality of the cabinet suffered grievously over a period of time. This led to significant decline in the quality of governance and decision making. Even when a party has a clear mandate and there is clarity in goals, and even if legislators' interference in day-to-day executive decisions is kept under check, the quality of ministers is often less than adequate to meet the complex requirements of modern democratic governance. As a result, even sound policies have failed to yield dividends for want of the ability to translate ideas into effective action. School education, health care, police reform, population control, employment generation, investment promotion, sustainable natural resource development, anti-poverty measures, policies for promotion of equity and social justice have all suffered even when the governments have recognised the need to pursue sound policies for their own political gains. For a complex country with myriad problems of great magnitude, the political talent available in State legislatures is woefully inadequate.

Nominated Governors – Skewed Federalism

59. The parliamentary executive model in States has also led to severe distortions in our federal relations. As the governor is nominated as head of State by the Union, we have an unaccountable Constitutional functionary with vast powers of selecting a chief minister, dismissing a government, dissolving the legislature, recommending president's rule under Article 356 and reserving a bill passed by the legislature for president's assent under Article 200. Often these powers are used in a highly discretionary and partisan manner. While the elected president with a wide mandate from the parliament and State legislatures has extremely limited powers, the nominated governor with no democratic mandate has a vast reservoir of unaccountable powers at the expense of the elected government in the State. As the traditional parliamentary executive necessitates a Constitutional head of state, this anomaly in States has become inevitable. When the State government does not enjoy the political support of the party in power at the Union level, this anomaly has led to several undemocratic actions. The frequent abuse of Article 356, the failure to assent to bills passed by the State assemblies, and the use of governor's office for blatantly partisan political games are too well-known to require elaboration. The Union has thus tended to exercise a high degree of needless control over the States, leading to centralization, inefficiency and unaccountable governance. This has actually proved counterproductive, as the Union's political games through the nominated governor's institution and Article 356 have weakened our federal

structure and at times led to serious sense of alienation of the people, promoting strife and discord, and undermining national unity and integrity.

State Legislators vs Local Governments

60. Another important and unhappy consequence of a parliamentary executive and unaccountable executive power in the hands of State legislators is severe weakening of local governments. A local legislator whose sole preoccupation is local political patronage often sees the elected local government as a serious rival encroaching into his territory. As local governments have been at the mercy of State legislatures until 1993, in most States local governments either did not exist, or when constituted, they tended to be feeble and ineffective. The States rarely showed any degree of commitment to transfer resources, functions and control over functionaries to local governments. As the State's political executive owes its survival entirely to elected legislators' good will and support, it is but natural that local governments would not be allowed to take roots against the will of the legislators whose dominance is threatened by empowered local governance. This situation underwent marginal change after 1993, with the advent of the 73rd and 74th Constitutional amendments. However, given the reluctance of the States, these amendments did not result in truly empowered and effective local governments. The Constitution now only ensures that local governments are constituted, elections are held regularly, panchayats and municipalities are not superceded en masse, and independent Constitutional bodies are appointed to monitor elections and advise on financial devolution. However, the Eleventh and Twelfth Schedules of the Constitution have no mandatory force and the State legislatures are free to transfer such subjects and powers as they deem fit to local governments. Given the political realities of legislators' unaccountable and disguised executive powers, most States chose not to empower local governments effectively. Even the Constitutional obligations of constituting local governments and holding regular and periodic elections are violated with impunity, by employing a variety of disingenuous and undemocratic devices and stratagems.

Direct Election of the Executive in States

61. These unhappy circumstances lead us to the conclusion that the cabinet drawn from the legislature, and surviving at the behest of the legislators is not necessarily the most suitable model of political executive in States. There is a strong and compelling case for a directly elected political executive and separation of powers in States. The arguments against separation of powers and direct election of the executive which are valid at the Union level do not hold good in States. There cannot be any serious fear of authoritarianism in States. The Union is the ultimate repository of sovereignty and guarantor of the Constitution and our democratic governance. The armed forces are controlled by the Union. The supreme court, a strong parliament, election commission, finance commission and Union executive are effective safeguards against authoritarianism in States. No elected State government has the power to undermine the essential features of the Constitution,

or the basic freedoms in a democracy. The need for a sense of participation and sharing of power among all regions and linguistic groups is a unique requirement of the Union, necessitating a parliamentary executive. In States, these imperatives no longer operate. Given these features of governance in States, there are no genuine reasons against clear separation of powers and direct election of executive in States.

62. Direct election of the executive and separation of powers have several clear and decisive advantages in States.
- The legislator can no longer be disguised unaccountable executive. Therefore, the local legislative election ceases to be a symbol of oligarchic domination. As legislative office is largely meant for law making and checking the abuse of executive authority, the power of patronage will not be available to legislators.
 - Serious minded, public-spirited citizens will aspire for, and be elected to legislature.
 - As constituency legislative election does not determine executive office, the incentive for vote-buying and local electoral irregularities disappears. At the same time, as the executive is directly elected for the whole State, no group or oligarchy will have sufficient dominance or incentive to resort to vote-buying and electoral malpractices across a whole State. The very nature of elections will be transformed.
 - As the executive will be untrammelled by day-to-day interference of the legislators in local executive decisions, there can be effective governance. The alibis for non-performance will no longer be available, and authority and accountability will be together.
 - At the same time, the legislature will have real control in law-making and budget approval. Therefore, the executive is kept constantly in check in institutionalized manner, and it will have to carry the legislature with it in carrying out its legislative agenda and policies.
 - As the executive's survival is independent of legislators' support, honest and unbiased action will be possible in matter of governance. Corruption can then be curbed, as honesty and political survival become compatible.
 - As the political executive can recruit the finest talent outside the legislature for executive responsibilities, the quality of governance will dramatically improve.
 - As there will be no need for nominated governors, federal relations will significantly improve, and democracy and States' autonomy will be strengthened.
 - As the executive and legislature would be elected separately for fixed terms, the Union can no longer abuse Article 356. Failure of Constitutional machinery in States as commonly interpreted, viz. in capacity to form a stable, majority government, will no longer be an issue. However, new mechanisms may have to be evolved to deal with other Constitutional failures. Many federal countries have such mechanisms. In the US, the federal government can send its troops or marshals to enforce the Constitution, maintain order or implement a court directive. Dismissal of a State government is not a necessary requirement to preserve the Union, except in extraordinarily grave emergencies like secession and civil war.

- Finally local governments can be really strong and effective once the State legislator does not perceive a threat to his position from the local government executive. As the State legislator's position is not based on patronage, he often becomes the effective interlocutor for local government's powers and initiatives, instead of being an adversary.
- A similar separation of powers in local governments, and a directly elected executive at the local level would be appropriate for the same reasons. Thus the authority and accountability will fuse at State and local levels and a new political culture will be evolved, making good governance a reality.

Problems of Over Centralisation

63. That brings us to the problems of over centralisation in our constitutional governance. A major State in India is larger than most European nations. Even a district is more populous than about 80 nations on earth, and is infinitely more complex and diverse than most countries. In a large and complex country like India, it is impossible for the national or State legislatures to fairly or effectively represent the people and all shades of public opinion. Given the largeness of constituencies and complexity of elections, there will always be a tendency to abuse public office or resort to vote buying. Even with the best will, and the most comprehensive electoral reforms, in a poor country many voters are often swayed by the inducement of money and liquor. The most credible citizens are discouraged from contesting as long as voters expect money to exercise their franchise. In order to address this question we should first understand why the citizens are selling their vote for money.
64. This habit of taking money to vote is actually a rational response to an irrational situation. It is often tempting to blame the illiterate and poor citizens for this plight of our democracy. But in reality it is the democratic vigour and enthusiastic participation of the countless poor and illiterate voters, which has sustained our democracy so far. However, most people have realized with experience that the outcome of elections is of little consequence to their lives in the long run. As a net result of several distortions, elections have lost their real meaning as far as the people are concerned. If, by a miracle, all winners in an election lose, and all their immediate rivals are elected instead, there will still be no real improvement in the quality of governance. This remarkable inertia and the seeming intractability of the governance process have convinced citizens that there is no real long-term stake involved in electoral politics. Therefore many poor citizens are forced to take a rational decision to maximise their short-term gains. As a result the vote has become a purchasable commodity for money or liquor. More often it is a sign of assertion of primordial loyalties of caste, religion, group, ethnicity, region or language. Very often without even any material inducement or emotional outburst based on prejudices, the sheer anger against the dysfunctional governance process makes most voters reject the status quo. Often this rejection of the government of the day is indiscriminate and there is no rational evaluation of the alternatives offered. In short, even the illiterate, ordinary voter is making a rational assumption

that the vote has no serious long-term consequences and the choice is between Tweedledom and Tweedledee. Therefore he is attempting to maximise his short-term material or emotional gain!

65. In the centralised system we have adopted, there are three fundamental problems. First, there is no clear link between the citizen's vote and public good. A rigid, unresponsive, centralized system provides no satisfactory mechanism for improvement through political choices. Even well-meaning functionaries are helpless in an over-centralised system. Second, the fiscal crisis enveloping India cannot be overcome through centralization. Our tax receipts at Union and State levels put together account for only about 18% of the GDP. The average for OECD countries is about 45% GDP. Our combined fiscal deficit is of the order of 10% of GDP or more. In a centralized system, people are unwilling to pay more taxes in the face of ubiquitous corruption and appalling quality of services. Even unproductive subsidies cannot be easily reduced, as the recipients of these subsidies do not see how these resources are redeployed to meet their local requirements. Third, the vast army of bureaucracy has become utterly unaccountable and mostly dysfunctional in a highly centralized system. All elected governments are helpless in enforcing accountability of public servants, and improving the quality of public goods and services. We have created a system of alibis in an over-centralized complex and administrative maze. Each functionary has logical, and plausible explanations for his non-performance. Public servants have become our masters, and the citizens have been reduced to a state of serfdom.
66. As wages are paid by a distant state or Union government, people in a poor, largely illiterate semi-literate country with strong traditions of colonial Raj do not summon the will or courage to enforce accountability of the oppressive and exploitative public servants. Sloth, inefficiency, arbitrariness, delays, corruption, harassment and humiliation of citizens have become endemic in such an unaccountable system with passive and helpless citizenry.

Link Between Vote and Public Good

67. This situation can be corrected only when the citizen appreciates the link between his vote and public good. If the local elected representative has no alibis for non-performance, then vote acquires a new meaning. If the school, road, drain, water supply, traffic regulation, land records, health centre and a myriad other public services are directly the responsibility of the elected government at the local level, then people see that whom they elect has a tremendous bearing on what happens after the elections. Such a situation is possible when the local governments – panchayats or municipalities – are truly empowered, and authority is exercised as close to the citizen as possible in an accountable manner. When there is a clear link between their vote and public good, and when tax monies are directly transferred to the public services, then people start using vote as an effective tool to make fine political judgments and elect suitable representatives.

68. The 73rd and 74th Amendments to the Constitution merely created local governments. It is now mandatory to create panchayats and municipalities, to hold regular elections, to have a State Election Commission and State Finance Commission. However, in the absence of Constitutionally mandated entrustment of responsibilities, local governments are at the mercy of the State legislatures. The State governments are often wary of parting with powers and functions. The Eleventh and Twelfth Schedules of the Constitution are merely recommendatory and many State Laws have violated the spirit of the Constitution. These provisions do not have the force of the Seventh Schedule, which clearly demarcates the functional jurisdiction of the Union and States. It is therefore necessary to clearly demarcate the functions of local governments Constitutionally on par with the Seventh Schedule, and to ensure that the required resources and control of public servants are entrusted to the local governments. Only then can representative government be truly democratic, accountable and effective.
69. We have had a long and unbroken tradition of local governments throughout our history. The inscriptions of Uttaramerur are a standing testimony to the strength of local governments centuries ago during the Chola era. Even during the modern era representative local governments came first, well before provincial and Union governments. Elected local governments in towns and cities came into being in 1890's. Many great stalwarts of freedom struggle who rose to eminence in public life started their careers in local governments. Chittaranjan Das, Vittalbhai Patel, Vallabhbhai Patel, Jawaharlal Nehru, Prakasam Pantulu, Subhash Chandra Bose and many others honed their skills while serving their community in civic governments. Representative governments in provinces came much later – partially in 1919 with Montague–Chemsford reforms, and substantially in 1935 with the Government of India Act. Elected government at the Union government came only in 1946 with freedom round the corner. Given this history, it is a curious distortion that our Constitution-makers could only envisage the Union and State governments, and have almost ignored local governments except for the somewhat patronizing mention of village panchayats as units of self-government as a directive principle of state policy under Article 40. It is time that this gross distortion of democracy is set right immediately, and true people's sovereignty is established through genuinely empowered local governments.
70. In conclusion, our parliamentary democratic institutions have served us well. For the first time in our history the ideals of rule of law, human dignity, liberty of citizens, people's sovereignty, and universal adult suffrage have taken root in our society. However, there is need for correcting the distortions which have surfaced over the years. Gandhiji's admonition should be the guiding principle in building institutions of state. "The real Swaraj will come, not by the acquisition of authority by a few, but by the acquisition of the capacity by all to resist authority when abused."

71. Equally important, our parliamentary democracy should be judged by Gandhiji's talisman:
"Recall the face of the poorest and the weakest man whom you have seen and ask yourself if the step you contemplate is going to be of any use to him. Will he gain anything by it? Will it restore him to a control over his own life and destiny? In other words, will it lead to Swaraj for the hungry and spiritually starving millions? Then you will find your doubts and your self melting away".
72. There is much we can be proud of in our record as a democracy. There is also much that needs to be corrected based on past experience. People want a genuine democracy which represents and empowers them. If we make an earnest attempt to design institutions wisely, we can then ensure that Swaraj is real and meaningful, and the poorest and marginalised Indians have something to celebrate and cherish. We will then succeed in building a nation of peace, freedom and unity, a nation that will play its rightful role globally in keeping with its size, history and civilization, and will promote happiness of our citizens internally.

* * * * *